

Notice of Allowability

Application No.

10/602,289

Examiner

Arnel C. Lavarias

Applicant(s)

ENDO ET AL.

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/21/06.
2. ☒ The allowed claim(s) is/are 1-17,22-29 (renumbered 1-25).
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>9/21/06</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

Information Disclosure Statement

1. The document listed as '(1)' in the 'Non-Patent Literature Documents' section of the information disclosure statement filed 9/21/06 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of that document listed that is not in the English language. The information referred to therein has not been considered, and the document has been lined through in the information disclosure statement.

Response to Amendment

2. The amendments to Claims 1, 9 in the submission dated 9/21/06 are acknowledged and accepted.
3. The addition of Claims 22-29 in the submission dated 9/21/06 is acknowledged and accepted.

Response to Arguments

4. The Applicants' arguments, see in particular Pages 9-12 of the submission, filed 9/21/06, with respect to the rejections of Claims 1, 5-9, 11-12, have been fully considered and are persuasive. The rejections in Sections 10-13 of the Office Action dated 6/20/06 have been withdrawn.

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5. Claim 1 is allowable. The restriction requirement among Inventions I, II, and III, as set forth in the Office action mailed on 9/22/05, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 2-4, 10, 13-17 are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, Claims 18-21 remain withdrawn from consideration because they do not all require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

6. Claims 1-17, 22-29 are allowed.
7. This application is in condition for allowance except for the presence of Claims 18-21 directed to an invention non-elected without traverse. Accordingly, Claims 18-21 have been cancelled.

EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancel Claims 18-21.

9. The following is an examiner's statement of reasons for allowance:

Claim 1 is allowable over the cited art of record for at least the reason that the cited art of record fails to teach or reasonably suggest an image display apparatus, as generally set forth in Claim 1, the apparatus including, in combination with the features recited in Claim 1, a reflection type hologram for diffracting and reflecting the illumination light from the light source section so as to guide the illumination light to the display element, the reflection type hologram having diffusing properties; wherein all illumination light entering the display element has been reflected by the reflection type hologram, and wherein the image light enters the eyepiece optical system without transmission through the reflection type hologram. Claims 2-17 are dependent on Claim 1, and hence are allowable for at least the same reasons Claim 1 is allowable.

Claim 22 is allowable over the cited art of record for at least the reason that the cited art of record fails to teach or reasonably suggest an image display apparatus, as generally set forth in Claim 22, the apparatus including, in combination with the features recited in Claim 22, a reflection type hologram for diffracting and reflecting the illumination light from the light source section so as to guide the illumination light directly to the display element, the reflection type hologram having diffusing properties; wherein the image light enters the eyepiece optical system without transmission through the reflection type hologram. Claims 23-29 are dependent on Claim 22, and hence are allowable for at least the same reasons Claim 22 is allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnel C. Lavarias whose telephone number is 571-272-2315. The examiner can normally be reached on M-F 9:30 AM - 6 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Arnel C. Lavarias
Primary Examiner
Group Art Unit 2872
11/1/06



ARNEL LAVARIAS
PRIMARY PATENT EXAMINER